

REMARKS

Claims 1, 2, 5, 6 and 8 are pending in the application. Claims 5, 6 and 8 have been cancelled.

Reconsideration of the present Application in light of submitted amendments and the following remarks is requested.

The following issues are outstanding in the Office Action dated March 13, 2003.

--Claims 1 - 2 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Brandimarte (U.S. Patent No. 4,648,185) in view of Miller (U.S. Patent No. 6,421,928).

Applicant hereby traverses the outstanding rejections and requests reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

Brandimarte discloses a leveling tool (10) including a longitudinal slot (14), a moveable tab member (18), and a fixed tab member (28). The tab members (18), (28) being of angled form and including upwardly extending limbs (18C), (28B) respectively. The upwardly extending limbs each including an opening for a pointed instrument such as a pen or pencil. In use, the tool (10) is held against the wall and the moveable tab member (18) is moved along the longitudinal slot (14) until the distance between the openings in the upwardly extending limbs of the tab members (18) and (28) correspond to the required distance between the pre-cut mounting holes of the item to be mounted. In position, the pointed instrument such as a pen or pencil is inserted through the openings of the upwardly extending limbs in order to mark the wall.

Brandimarte does not disclose a leveling and marking tool wherein the moveable tab member and fixed tab member each have a conical point that outwardly projects from the back surface of the frame as does Claims 1 and 2 of the present invention.

The Examiner states that it would have been obvious to one of ordinary skill in the art to modify the leveling and marking tool of Brandimarte to include conical shaped points outwardly projecting from the tabs, as taught by Miller, so that a marking device already taught by Brandimarte would be permanently fixed to the tabs, so that a user can mark a wall without a pen or pencil.

Miller requires two moveable tabs, and in use, both tabs in Miller are moved away from a center zero point. The present invention as disclosed and claimed only require movement of a single projected tab. The other projected tab is fixed at the zero point.

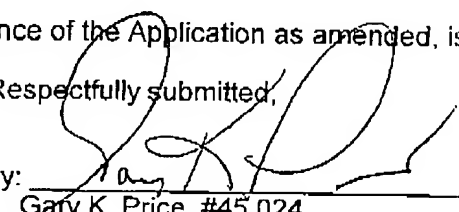
While the marking tool of Brandimarte, in view of Miller, may include permanent points projecting from the tab members (18) and (28), the points, as disclosed in Brandimarte, would then project at the "marking location" in Brandimarte namely, at the openings in the upwardly extending limbs of the tab members. The tool as disclosed in Brandimarte would not have points that outwardly project from the back surface of the frame as does Claims 1 and 2 of the present invention. Further, points projecting from the openings of the upwardly extending limbs, would not allow the frame (10) to be held against the wall during use as instructed in Brandimarte.

Claims 1 and 2 of the present invention includes the limitation of conical points that outwardly project from the back surface of the frame. Brandimarte does not allow for points that project from the back surface of the frame. Further, Brandimarte does not consider the "marking location" of the tool (10) being at the back surface of the frame as does the present invention. The tool as shown by Brandimarte could not include conical points projecting from the back surface of the frame (10). Such an arrangement would render the angled tab members (18) and (28), including the openings in the upwardly extending limbs as disclosed in Brandimarte, useless.

Again, Brandimarte does not consider conical points outwardly projecting from the tab members (18) and (28), and does not allow for conical shaped points outwardly projecting from the back surface of the frame. Neither Brandimarte or Miller teach of a leveling tool having a first projected tab mounted to a fixed hole and a second projected tab, wherein the first and second projected tab each having a conical point that outwardly project from the back surface of the frame. For these reasons it is felt that independent claim 1, and dependent claim 2 are in condition for allowance.

Reconsideration and an early allowance of the Application as amended, is requested.

Respectfully submitted,

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